

MONTANA LEGISLATIVE HISTORY

Chapter 470 19 83

Bill H 277 S _____

Original bill & history ☒ c

H. Committee on Labor & Employ...

Hearing Date(s) 2-1 ☒ c

2-8 ☒ c

_____ c

_____ c

Date Out _____ c

S. Committee on Labor & Employ...

Hearing Date(s) 3-3 ☒ c

3-8 ☒ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE BILL NO. 277

INTRODUCED BY CONOVER, MAZUREK, LYBECK

IN THE SENATE

January 24, 1983	Introduced and referred to Committee on Natural Resources.
February 1, 1983	Committee recommend bill do pass. Report adopted.
February 2, 1983	Bill printed and placed on members' desks.
February 3, 1983	Second reading, do pass.
February 4, 1983	Correctly engrossed.
February 5, 1983	Third reading, passed. Ayes, 44; Noes, 2. Transmitted to House.

IN THE HOUSE

February 7, 1983	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
March 14, 1983	Committee recommend bill be concurred in. Report adopted.
March 18, 1983	Second reading, concurred in.
March 19, 1983	Third reading, concurred in.

IN THE SENATE

March 21, 1983

Returned to Senate. Sent
to enrolling.

Reported correctly
enrolled.

1 *Senate* BILL NO. *277*
 2 INTRODUCED BY *Conrad N. Lybeck*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
 5 85-7-1902, MCA, TO PROVIDE THAT A BOARD OF COMMISSIONERS OF
 6 AN IRRIGATION DISTRICT MAY REFUSE DELIVERY OF WATER TO ANY
 7 PERSON WHO OWES MONEY TO THE DISTRICT."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 85-7-1902, MCA, is amended to read:

11 "85-7-1902. Management of district by board. (1) The
 12 board of commissioners of every irrigation district
 13 established and organized under and by virtue of parts 1 and
 14 15 of this chapter shall constitute the corporate authority
 15 of said district.

16 (2) The board shall have the power and it shall be the
 17 duty of the members thereof to manage and conduct the
 18 business and affairs of the district; adopt a corporate seal
 19 therefor; make and execute all necessary contracts; employ
 20 and appoint such agents, officers, and employees as may be
 21 required and prescribe their duties.

22 (3) The board is hereby authorized and empowered to
 23 institute and maintain any and all actions and proceedings,
 24 suits at law or in equity, necessary or proper in order to
 25 fully carry out the provisions of this chapter, or to

1 enforce, maintain, protect, or preserve any and all rights,
 2 privileges, and immunities created by this chapter or
 3 acquired in pursuance thereof. In all courts, suits, or
 4 proceedings, the board may sue, appear, and defend in person
 5 or by attorneys and in the name of such irrigation district.

6 (4) The board may adopt rules and bylaws governing the
 7 calling and holding of meetings of the board; the manner of
 8 transacting business thereat; and the publishing or posting
 9 of the orders, resolutions, and proceedings of the board. It
 10 shall be the duty of said board to pass or adopt bylaws and
 11 rules for the apportionment and distribution of water to the
 12 lands of the district and for the protection and
 13 preservation of the works and other property of the
 14 district, and the board may therein require the prompt
 15 payment of all current and delinquent taxes and assessments
 16 delinquent--for--not--to--exceed--2--years and other financial
 17 obligations owing the district as a prerequisite to water
 18 service. The bylaws and rules shall be printed in convenient
 19 form for distribution in the district. All orders and
 20 resolutions shall be passed or adopted by a majority of the
 21 commissioners by a yea and nay vote, to be entered upon the
 22 records of the board.

23 (5) Said board shall have power generally to do and
 24 perform all such other acts as shall be necessary or
 25 appropriate to fully carry out the purposes of this

1 chapter."

-End-

STATUS SHEET
HOUSE LABOR AND
EMPLOYMENT RELATIONS COMMITTEE

Page 2

__ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 226	Grants authority to the Div. of Workers Comp to employ adequate number of boiler inspectors and to set their duties	1/13	Asay	1/20	AND AS AMENDED DO PASS	1/20
HB 256	Places unemployment insurance penalty and interest collections by the Dept. of Labor in the state general fund	1/17	Wallin	1/25	TABLED	1/25
HB 270	Allows a person who is temporarily totally disabled under Workers' Comp Laws to use wage credits from prior employment	1/18	Driscoll	1/25	DO PASS	1/25
HB 271	Authorizes manufacture of certain signs in institutions; forbids any future collective bargaining contract from restricting such; state government to buy, etc.	1/18	Thoft	1/25	DO NOT PASS	1/31
HB 277	Makes Workers Comp coverage mandatory for independent contractors and providing for an optional exemption from coverage	1/18	Smith	2/1	AND AS AMENDED DO PASS	2/8
HB 281	Allows employees of municipal and county governments to work more than 8 hours a day and to agree to a 14-day, 80-hour work period and allows fire dept. employees to work an agreeable	1/18	Dozier	1/25	AND AS AMENDED DO PASS	2/17

Form CS-32 workday.

the assets. Rep. Ellerd asked if there was any criminal penalty for something like this. Rep. Addy said no.

Rep. Bachini asked if they can go after the personal property. Rep. Addy said yes - that is his purpose.

Chairman Williams closed the hearing on this bill and opened the meeting to a hearing on HB 277.

HOUSE BILL 277

REPRESENTATIVE CLYDE SMITH, District 18, chief sponsor, said this bill is at the request of the Department of Labor and Industry. He said the reason for the change in the law is this: at the present time we have independent contractors and they are such until they get hurt. Suddenly, they acquire an employee status and want to be paid out of the unemployment compensation fund. Under this act, an independent contractor can exempt himself but will have to have proof that he has done so. He had passed out to the members a substitute bill and this is Exhibit 9 of the minutes.

GARY BLEWETT, Division of Workers Compensation, Department of Labor, spoke next in support and a copy of his testimony is Exhibit 10 of the minutes.

ARLYN PLOWMAN, Cement Workers #239, spoke next in support and a copy of his testimony is Exhibit 11 of the minutes.

ROBERT N. HELDING, Montana Wood Products Association, spoke in support of the bill as amended. He said this bill makes sense and he earnestly supports it.

DON JUDGE, Montana State AFL-CIO, urged the adoption of the bill as it would give the Division a chance to work as it was intended to. A copy of his testimony is Exhibit 12 of the minutes.

GENE PHILLIPS, LHC Inc., spoke in support of the bill. He said they might have been the cause for the bill to occur. He said a few years ago a client who has a small log hauling company had a terrible accident which involved an employee and an independent contractor hauling logs for the client. The employee was killed and the independent contractor was sued. He had no liability and this caused his client to be dragged in as they tried to prove he was an employee. It went to the Supreme Court and the decision was that he was an independent contractor. This bill would more clearly differentiate these independent contractors from employees.

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE MINUTES
February 1, 1983
Page 7

BEN HAVDAHL, Montana Motor Carriers Association, said he supported the bill for the reasons given by Mr. Phillips and Mr. Holding.

GEORGE WOOD, Montana Self Insurance Association, spoke in support.

JOHN HOLLOW, Montana Home Builders Association, spoke as a co-ponent. He said as he reads the bill, if you apply the court's decision as to what is an employee, you are likely to end up with a lot of employees and few independent contractors. It was his experience that if the independent contractor is unemployed with starving wife and kids, the courts tend to interpret the law so he becomes an employee. They are looking for a deep pocket. He suggested putting into the statement of intent some guidelines as to what decision you want to apply. He also asked about the employee that has a night-time job as an independent contractor. There should be a mechanism that would cover him without needing to go to court to get a determination. He also asked that the amount of paper work be kept down for those wishing to be independent contractors.

REPRESENTATIVE SMITH in closing said the bill was a joint effort primarily of the Division of Worker's Compensation and the Timber Association.

Questions were asked by the committee.

Rep. Thoft asked concerning agriculture. How would sheep shearers be considered? Mr. Blewett responded that the bill does not define. What it does is say if a party wants to be an independent contractor he has to buy his own insurance and get a written exemption. He said the definition of independent contractor is subtle. The method of pay, owning his own equipment, hours worked are all factors. He said there is a whole body of legal cases.

Rep. Hannah asked if they would need to set up additional rules. Mr. Blewett said they would need rules to receive an application of exemption and what is the grievance procedure for objections.

Rep. Hannah asked if it is more difficult for one to become licensed as an independent contractor in the state. Mr. Blewett said no.

Rep. Driscoll said the bill does not speak to the independent contractor but to the one hiring him. He can ask: show me your insurance or your exemption. This would protect the employer.

Chairman Williams closed the hearing on this bill and opened the meeting to a hearing on HB 406.

#B 277 with proposed amendments incorporated into the bill.

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING WORKERS' COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS AND PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE; AMENDING SECTION 39-71-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-401, MCA, is amended to read:
"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection subsections subsection (2) and {3} of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117, and and to all employees as defined in 39-71-118₇ and--to-all-sole proprietorw-or-working-members-of-a partnership-who-consider -themselves-or-hold-themselves-out-as independent-contractors--A-sole-proprietor-or-working-member-of-a partnership-who-considers-himself-or-holds-himself-out-as-an independent-contractor-shall-elect-to-be-bound-by-the-provisions of compensation-plan-No-1-2-3. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116(3);
- (c) employment of members of an employer's family dwelling in the employer's household;
- (d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors;
- (e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (f) any person performing services in return for aid or sustenance only;
- (g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor MUST ELECT TO BE BOUND PERSONALLY AND INDIVIDUALLY BY THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3 BUT HE may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of independent contractor and precludes the applicant from obtaining benefits under this chapter.

Amend lc585

Proposed amendment to ~~H~~B 277.

1. Page 1, line 13.

Following: "~~subsection~~"

Strike: "subsections"

Insert: "subsection"

2. Page 1, line 14.

Following: "(2)"

Strike: "and (3)"

3. Page 1, line 15.

Following: "39-71-117"

Strike: "z"

Following: "and"

Insert: "and"

4. Page 1, line 16 through line 22.

Following: "39-71-118"

Strike: inserted material through line 22.

5. Page 2, line 25.

Following: "contractor"

Insert: "must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but he"

H STATEMENT OF INTENT
Bill No. 277 [LC 585]

Under the law in effect prior to the enactment of this act, independent contractors were exempt from coverage under the Workers' Compensation laws. Many times, the determination of whether a worker is an independent contractor is made after a worker, for whom no contributions have been made, is injured and files a claim. This act provides a method for a before-the-fact determination of the independent contractor status. The act is not intended to make independent contractors subject to the Workers' Compensation Act but requires that they apply for that status to be exempt.

This bill authorizes the Division of Workers' Compensation of the Department of Labor and Industry to adopt rules to implement this act. It is the intent of the Legislature that the Division will provide an application form and provide for a hearing if the applicant disagrees with the Division's initial determination. Any substantive rules adopted pursuant to this act must be consistent with the statutory definition of "independent contractor".

WITNESS STATEMENT

Name ARLEN PLOWMAN Committee On LABOR
Address BOZEMAN Date 2-1-83
Representing CEMENT WORKERS #239 Support X
Bill No. H.B. 277 Oppose _____
Amend X

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. SEE STATEMENT

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



UNITED CEMENT, LIME AND GYPSUM WORKERS
LOCAL UNION NO. 239 AFL-CIO
THREE FORKS, MONTANA

Arlyn Plowman

NAME OF WRITER

Box 804

ADDRESS

Three Forks, Mt. 59752

CITY, STATE AND ZIP

Testimony of Arlyn Plowman on House Bill 277 before the House
Committee on Labor and Employment Relations, February 1, 1983.

Chairman, Members of the Committee, my name is Arlyn Plowman
and I am representing United Cement, Lime, Gypsum and Allied
Workers Local 239, Three Forks.

We support House Bill 277.

While the problem of independent contractors has not surfaced
in our experience, we believe strongly, that every worker
ought to be covered by Workers' Compensation Insurance.

Too often employers who do not meet their legal and moral
obligations have an economic advantage over those who do.

When, for the sake of an economic advantage, an employer
shirks his responsibilities that employer is not only being
unfair to his workers, he is also putting an additional
burden on our society.

There should be no incentives for anyone not to meet his
or her obligations. This bill would remove one of those
incentives.

Cx. 11

A.B. 277



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARYZIP CODE 59624
406/442-1708

TESTIMONY OF DONALD R. JUDGE IN SUPPORT OF HOUSE BILL 277, BEFORE THE HOUSE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 1, 1983

I am Don Judge, representing the Montana State AFL-CIO.

The Montana State AFL-CIO supports House Bill 227. This bill, as amended by the proposals of the Workers' Compensation Division is an attempt to provide workers' compensation coverage to more Montana employees.

There are loopholes in Montana law today which allow some corporations, particularly in the lumber and construction industries, the ability to deny workers' compensation and unemployment insurance benefits to their workers. This loophole is in the listing of exemptions. Each session, this legislature faces an attempt to expand the exemptions so that more employees will be denied coverage.

In recent years, there has been an increasing trend to call additional employees in certain industries independent contractors. This saves the employer from paying workers' compensation premiums. In especially dangerous industries, that can be a substantial savings for the company.

House Bill 277 requires that so-called independent contractors have workers' compensation coverage, unless they are determined to be independent contractors by the division. There will be several effects of that provision.

First, it could work a financial hardship on so-called independent contractors, so that they will try very hard not to let the prime employer force them into the position of being called independent contractors.

The second effect will be that the so-called independent contractor may be forced to have insurance against disaster. When injuries strike, as they do so often in the industries which most make use of so-called independent contractors, coverage will be provided. This will protect the worker. It also protects the company from lawsuits brought by injured workers. These are workers who, when they are not able to work due to work-related accidents, claim that they were really employees rather than independent contractors.

Not every independent contractor will be covered. In fact, every independent contractor has the option of refusing coverage by applying to the Workers' Compensation Division for exemption. The Division must accept that application, unless it finds that the person or persons are not really independent contractors. That ruling will then be binding on both the contractor and the company.

If the person is ruled to be in fact an independent contractor, then no benefits can be received under this act. And the company subcontracting with the independent contractor has no liability.

If however, the person is found to be an employee, the company must provide coverage under workers' compensation.

House Bill 277 is an excellent way to extend coverage to more workers in dangerous occupations, and to provide clarity as to who is and isn't covered for the protection of both the workers and the companies involved.

We recommend that you give this bill a "do pass" recommendation.

WITNESS STATEMENT

Name JIM MAYES Committee On LABOR
Address 2737 AIRPORT Rd Date _____
Representing LOCAL 400 ELUOE Support X
Bill No. 277 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

LABOR AND
HOUSE EMPLOYMENT RELATIONS COMMITTEE

DATE 2/1/83

SPONSOR SMITH

FORM CS-33

HOUSE BILL 277 Rep. Dozier moved AS AMENDED DO PASS.
Rep. Smith said the uninsured employer fund is broke and HB 406 is designed to provide some money in that fund by a mill levy on employers. However, a drain on that fund has been the independent contractors, who are independent until hurt. This bill says they have to declare their independence, otherwise they will be covered by Workers' Comp and have to pay their share.

The motion carried unanimously. Rep. Hannah was absent and Rep. Farris and Rep. Thoft had left votes favoring the bill.

HOUSE BILL 406 Rep. Miller moved DO PASS. This motion passed unanimously with those present. Rep. Farris had left a vote favoring the bill and Reps. Hannah and Thoft were absent.

Chairman Williams closed the executive session and opened the meeting to a hearing on HB 359.

HOUSE BILL 359

REPRESENTATIVE JAN BROWN, District 32, said this bill was requested by the Department of Labor and has to do with the child labor law. She said it would be the first change since 1907. She said the law now is vague and hard to enforce. She said the federal law was passed in 1938 and has worked well, and the language in this bill is similar. She said this bill has been unsuccessfully brought before the legislature the past three sessions. She said a study passed last session but was given too low a priority so failed to be funded.

DON JUDGE, Montana State AFL-CIO, spoke next in support and a copy of his testimony is Exhibit 1 of the minutes.

GENE CHRISTIANSON, Office of Public Instruction, said they support the bill but have a concern on page 14, lines 2 through 10. He suggested striking these lines as they unfairly restrict 16 and 17 year olds. Also on page 14, line 21, it should designate whether "county" or "district" superintendent.

DICK KANE, Labor Standards Division, Department of Labor and Industry, said they are the ones that keep bringing this bill back each session. He said one of the problems they run up against is where schools place students in work situations for part of their education. He said passing this law will open up new working opportunities.

H STATEMENT OF INTENT
Bill No 277 [LC 585]

Under the law in effect prior to the enactment of this act, independent contractors were exempt from coverage under the Workers' Compensation laws. Many times, the determination of whether a worker is an independent contractor is made after a worker, for whom no contributions have been made, is injured and files a claim. This act provides a method for a before-the-fact determination of the independent contractor status. The act is not intended to make independent contractors subject to the Workers' Compensation Act but requires that they apply for that status to be exempt.

This bill authorizes the Division of Workers' Compensation of the Department of Labor and Industry to adopt rules to implement this act. It is the intent of the Legislature that the Division will provide an application form and provide for a hearing if the applicant disagrees with the Division's initial determination. Any substantive rules adopted pursuant to this act must be consistent with the statutory definition of "independent contractor".

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB #14	1/10/83	3/1/83	3/3/83				3/3/83		
HB #142	1/24/83	3/1/83	3/3/83				3/3/83		
HB #157	1/24/83	3/3/83	3/8/83				3/8/83		
HB #174	3/1/83	3/22/83	3/24/83						3/24/83
HB #201	1/28/83	3/3/83	3/8/83				3/8/83		
HB #225	1/28/83	2/15/83	3/3/83					3/3/83	
HB #226	1/28/83	2/15/83	3/3/83						3/3/83
HB #270	1/31/83	3/8/83	3/12/83				3/12/83		
HB #277	2/16/83	3/3/83	3/8/83					3/8/83	
HB #281	3/1/83	3/17/83	3/24/83					3/24/83	
HB #300	2/10/83	3/12/83	3/19/83						3/19/83
HB #301	1/31/83	3/12/83	3/15/83				3/15/83		
HB #302	1/31/83	3/10/83	3/15/83				3/15/83		
HB #309	3/1/83	3/17/83	3/24/83					3/24/83	
HB #384	2/7/83	3/15/83	3/19/83				3/19/83		
HB #390	2/4/83	3/15/83	3/19/83					3/19/83	

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 3, 1983

The meeting of the Labor Committee was called to order by Chairman Gary C. Aklestad on March 3, 1983, at 1:00 p.m. in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF HOUSE BILL NO. 277:

Chairman Aklestad and Vice-Chairman, Senator Keating, were absent at the beginning of the meeting due to conflicts with other meetings. In their absence Senator Galt presided.

Senator Galt introduced Representative Clyde Smith, sponsor of House Bill No. 277, to the Committee, and Representative Smith presented the bill to the Committee.

House Bill No. 277 is an act making workers' compensation coverage mandatory for independent contractors and providing for an optional exemption from coverage.

PROPONENTS OF HOUSE BILL NO. 277:

Representative Robert Ellerd, representing House District No. 75, offered an amendment to House Bill 277. This amendment is attached. (Exhibit No. 1)

Gary Blewett, administrator of the Division of Workers' Compensation, stated that they are in support of House Bill 277 as well as the amendment offered by Representative Ellerd. Mr. Blewett's printed testimony is attached. (Exhibit No. 2)

Gene Phillips of Kalispell, representing LHC Inc., stated that they support House Bill 277 mainly for two reasons:

- (1) It promotes insurance coverage.
- (2) It puts the determination up front in the beginning at no cost to anyone.

Keith Olson of Kalispell, representing the Montana Logging Assoc., stated they are in support of House Bill 277 as amended.

Robert Holding of Missoula, representing Montana Wood Products Association, stated they support House Bill 277.

Bob Lamley of Milltown, Montana, representing Champion International, stated that they are in support of House Bill 277.

Jim Murry, representing the Montana AFL-CIO, stated they are in support of House Bill 277. Mr. Murry's printed testimony is attached. (Exhibit No. 3)

John Hollow, representing Montana Home Builders, stated that they are now in support of House Bill 277 and had withdrawn the objection they had to the bill in the House.

Representative Jerry Driscoll, representing House District 69 of Billings, stated that they support House Bill 277. He further stated that this bill would make sure that they had proof they are an independent contractor.

OPPONENTS OF HOUSE BILL NO. 277: None were present at the hearing.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 277:

Senator Galt: This bill will affect other industries as well as the timber industry--will those industries have to come in to get an exemption?

Representative Smith stated that he wasn't sure about this.

Gary Blewett: Foremen, etc. could purchase insurance or use the exemption. He explained the exemption process to the Committee.

Mr. Blewett stated that there may be lots of applications coming in at the outset that they would have to evaluate.

Senator Aklestad: Is there any restriction in the law that says you have to act on them when they are received?

Gary Blewett: Not at the present time.

Representative Smith made closing remarks in support of House Bill 277.

Chairman Aklestad called the hearing closed on House Bill 277.

CONSIDERATION OF HOUSE BILL NO. 157:

Chairman Aklestad asked Representative Jerry Driscoll, sponsor of House Bill No. 157, to present the bill to the Committee.

House Bill No. 157 is an act authorizing each party to an unfair labor practice proceeding to disqualify without cause one hearing examiner designated to hear the matter.

Representative Driscoll stated that this bill would give a little more credibility to the hearing examiner.

ROLL CALL

LABOR

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 3/3/80

[illegible]

March 3, 1983

AMENDMENT TO HOUSE BILL 277

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING WORKERS' COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS AND PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE AND REQUIRING EMPLOYERS TO POST THE STATUS OF THEIR COVERAGE IN THE WORKPLACE: AMENDING SECTION 39-71-401, MCA."

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment regardless of whether the location is temporary or permanent and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who does not properly post such a sign is guilty of a misdemeanor.

amend statement of intent by adding at the end:

It is also the intent of the Legislature that the Division will provide employers with signs and determine an economical and convenient method of distribution and disposal of such signs through insurers when the employer is properly covered under one of the three compensation plans or when a policy is cancelled in accordance with 39-71-2205, MCA, or through the Division directly when a policy is cancelled in accordance with 39-71-2307, MCA, when self-insurance status is revoked in accordance with 39-71-2105, MCA, when an employer is exempt from coverage under this chapter, or when an employer lacks coverage and has been ordered to cease operations in accordance with 39-71-507, MCA, and that the Division will maintain procedures to control the distribution and disposal of such signs to prevent their improper use and to accommodate the changing coverage employers may have from time to time.



**DIVISION OF
WORKERS'
COMPENSATION**



2.



TED SCHWINDEN GOVERNOR

815 FRONT STREET

STATE OF MONTANA

HELENA, MONTANA 59604

TESTIMONY OF GARY BLEWETT ON HOUSE BILL 277, BEFORE THE SENATE LABOR AND
EMPLOYMENT RELATIONS COMMITTEE, MARCH 3, 1983

I am Gary Blewett, Administrator of the Division of Workers' Compensation, in support of House Bill 277. This bill provides for mandatory workers' compensation coverage for independent contractors unless they elect not to be covered and that election is approved by the Division. An election not to be covered would be disapproved if the applicant was found not to be an independent contractor but was, in fact, an employee.

This is opposite of the situation under current law. Independent contractors do not now have to have coverage for themselves unless they elect coverage. This arrangement allows for two recurring problems: (1) So-called independent contractors who have an accident on a job often will seek coverage as an employee after the fact; and (2) independent contractors often do not insure their employees, when they have them, due to confusion about what is required of independent contractors.

The first problem happens because the distinction between an independent contractor and an employee is subtle. An independent contractor

is one who renders occupational services free from the control or direction of the employer and is engaged in an independently established trade, occupation, profession, or business. How free a person is from control is arguable and often is in court after a so-called independent contractor has an accident. If the court determines the claimant is an independent contractor, the claimant loses all right to workers' compensation benefits, and the insurer is relieved from all liability. If, on the other hand, the court determines that the claimant is an employee, then the claimant receives workers' compensation benefits, and liability for such payments is placed upon the employer's insurance carrier even though no premium has been collected by it for the assumption of such risk.

The second problem is, perhaps, an even greater one in that it creates what seems to be a growing population of uninsured employers. The fact that the owners of businesses that are independent contractors currently do not have to seek either insurance or exemption creates an atmosphere of disregard for any coverage at all. This is partly due to confusion about what is required of independent contractors and partly due to their changing circumstances. From time to time only the owner or the partners may be providing the contracted services, but at other times they may have employees working with them on a contract. Current law says that when the owner or partners are doing the work, insurance is not required, but when an employee is on the job then that employee, at least, must be covered. Unfortunately, the insurance is frequently not purchased because the independent contractor only infrequently has employees.

House Bill 277 with substitute language addresses the most important objective of the Workers' Compensation Act--it promotes coverage for everyone who is an employee while minimizing uninsured circumstances. It achieves this by requiring those who hold themselves out or consider themselves to be independent contractors to either purchase workers' compensation insurance or seek official exemption from the Division. If they are approved for the exemption, they are precluded from receiving workers' compensation benefits. However, if they are not certified as exempt independent contractors, insurers will either collect premium for the risk directly from the independent contractor or from the employer of an alleged but uncertified independent contractor.

By requiring the decision about coverage to be up front, the Division can carry out its compliance function within the scope of its current staff. The proposed legislation is largely self-enforcing through the concern of employers for their own financial well-being. An employer will require independent contractors to either have insurance or a Division certificate of exemption; otherwise, they will be subject to premium payments on an alleged independent contractor who will be treated by insurers as an employee.

The proposed legislation will overcome deficiencies in current law, and I urge your support.



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY IN SUPPORT OF HOUSE BILL 277, BEFORE THE SENATE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE, MARCH 3, 1983

I am Jim Murry, executive secretary of the Montana State AFL-CIO.

The Montana State AFL-CIO supports House Bill 277. This bill is an attempt to provide workers' compensation coverage to more Montana employees.

There are loopholes in Montana law today which allow some corporations, particularly in the lumber and construction industries, the ability to deny workers' compensation and unemployment insurance benefits to their workers. This loophole is in the listing of exemptions. Each session, this legislature faces an attempt to expand the exemptions so that more employees will be denied coverage.

In recent years, there has been an increasing trend to call additional employees in certain industries independent contractors. This saves the employer from paying workers' compensation premiums. In especially dangerous industries, that can be a substantial savings for the company.

House Bill 277 requires that so-called independent contractors have workers' compensation coverage, unless they are determined to be independent contractors by the division. There will be several effects of that provision.

First, it could work a financial hardship on so-called independent contractors, so that they will try very hard not to let the prime employer force them into the position of being called independent contractors.

Testimony of Jim Murry
House Bill 277
March 3, 1983

The second effect will be that the so-called independent contractor may be forced to have insurance against disaster. When injuries strike, as they do so often in the industries which most make use of so-called independent contractors, coverage will be provided. This will protect the worker. It also protects the company from lawsuits brought by injured workers. These are workers who, when they are not able to work due to work-related accidents, claim that they were really employees rather than independent contractors.

Not every independent contractor will be covered. In fact, every independent contractor has the option of refusing coverage by applying to the Workers' Compensation Division for exemption. The Division must accept that application, unless it finds that the person or persons are not really independent contractors. That ruling will then be binding on both the contractor and the company.

If the person is ruled to be in fact an independent contractor, then no benefits can be received under this act. And the company subcontracting with the independent contractor has no liability.

If however, the person is found to be an employee, the company must provide coverage under workers' compensation.

House Bill 277 is an excellent way to extend coverage to more workers in dangerous occupations, and to provide clarity as to who is and isn't covered for the protection of both the workers and the companies involved.

We recommend that you give this bill a "do pass" recommendation.

WITNESS STATEMENT

NAME

KEITH L. OLSON

BILL No.

HB 277

ADDRESS

KALISPELL

DATE

3-3-83

WHOM DO YOU REPRESENT

Montana Logging Assn.

SUPPORT

as amended

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

MLA represents ... ind. contractors ... timbered regions of MT.
Work Comp represents ... most significant indirect expense ... cost of logging
When MLA formed 1976 ... excess of \$35 ... Today less than \$20
MT's work comp laws benefit MT's Employers & Employee's ALIKE
• for Employers ... represents liability insurance ... sole recourse
• for Employees ... represents medical and loss of income insurance
Problem in Logging Industry is in the Gray Area which defines
• independent contractor status of owner-operators
• for example, is the own/opr of \$100,000 log truck ind. contr/employee?
Apparent conflict between State Law and Judicial Opinion is at fault
State Law: ind. contr. does not have to cover himself
Judicial Opinion: After accident may determine injured own/opr is employee
No mechanism exists to make determination before the accident
HB 277 is that mechanism ...
MLA appreciates seriousness of this conflict / straddling the fence
40% of membership own/opr 60% prime contractors
Many prime contractors ... realizing liability exposure ... hire own/opr who cover selves
Own/opr resent this
MLA's desire is to narrow, if not eliminate, gray area creating conflict
HB 277 as amended will
(1) require own/opr eligible for benefits to pay premium
(2) allow own/opr not eligible for benefits to obtain exemption

NAME: BOB HELDING DATE: 3-7-83

ADDRESS: MISSOULA, MT.

PHONE: 728-3650

REPRESENTING WHOM? MONTANA WOOD PRODUCTS ASSOC

APPEARING ON WHICH PROPOSAL: HB 277

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ACTION ON HOUSE BILL NO. 157:

Senator Lynch moved that House Bill No. 157 Be Concurred In. On a voice vote, the Committee voted unanimously with the exception of Senator Goodover who was excused, that HOUSE BILL NO. 157 BE CONCURRED IN.

Senator Manning will carry House Bill No. 157 on the floor.

ACTION ON HOUSE BILL NO. 201:

Senator Lynch moved that House Bill No. 201 Be Concurred In. On a voice vote, the Committee voted unanimously with the exception of Senator Goodover who was excused, that HOUSE BILL NO. 201 BE CONCURRED IN.

Senator Blaylock will carry House Bill No. 201 on the floor.

ACTION ON HOUSE BILL NO. 277:

Two amendments to House Bill No. 277 were submitted to the Committee by Staff Attorney, John MacMaster. These amendments are attached. (Exhibits No. 6 and 7)

Senator Lynch moved that the second set of amendments (Exhibit No. 7) Do Pass. On a voice vote, the Committee with the exception of Senator Goodover who was excused, voted unanimously to adopt the amendments.

Staff Attorney, John MacMaster, presented an amendment submitted by Representative Robert Ellerd at the hearing on March 3, 1983. J. MacMaster explained the change in the amendment to the Committee. This amendment is attached. (Exhibit No. 8)

Senator Galt asked about the signs required by the amendment.

Gary Blewett from the Workers' Compensation Division of the Department of Labor stated that they would have signs distributed through the insurer. They would work with each industrial group affected by it

Senator Keating made a substitute motion that on the last line of paragraph 4 the words, "is guilty of a misdemeanor" be deleted and insert the words, "subject to a fine of \$50 for each citation".

Senator Aklestad: Where does this sign have to be posted?

Gary Blewett: The language in the bill allows some discretion, but it says, "where employee notices are normally posted".

Mr. Blewett stated that he believes this can be accomplished within their present budget.

Senator Keating: What court would this be heard in?

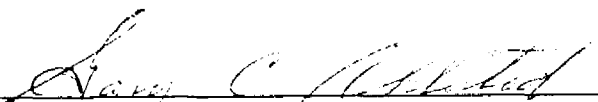
Anne MacIntyre: Most misdemeanors can be charged in Justice of the Peace Courts.

Senator Lynch moved that the amendment to House Bill 277 proposed by Senator Keating be adopted. The Committee voted unanimously, with the exception of Senator Goodover who was excused, to adopt the amendment as amended.

Senator Lynch moved that the Statement of Intent be amended to reflect the language relating to signs. The motion carried unanimously, with the exception of Senator Goodover who was excused, to amend the Statement of Intent.

Senator Lynch moved that House Bill No. 277 Be Concurred In as Amended. On a Roll Call Vote, the Committee voted 6-1 that HOUSE BILL NO. 277 BE CONCURRED IN AS AMENDED. Senator Goodover was excused and not present for the vote. The Roll Call Vote is attached.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 2:30 p.m.



Senator Gary C. Aklestad, Chairman

ROLL CALL

LABOR

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 3/8/83

[illegible]

STANDING COMMITTEE REPORT

March 8

1983

MR. PRESIDENT

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration HOUSE Bill No. 277

Smith (Lynch)

Respectfully report as follows: That HOUSE Bill No. 277

third reading, be amended as follows:

1. Title, line 8.

Following: line 8

Insert: "WHO ARE NOT CONTRACTING FOR AGRICULTURAL SERVICES TO BE
PERFORMED ON A FARM OR RANCH"

2. Title, line 9.

Following: line 9

Insert: "REQUIRING EMPLOYERS TO POST SIGNS GIVING NOTICE OF EMPLOYER'S
COVERAGE AND PROVIDING A FINE;"

3. Page 2, line 12.

Following: "contractors"

Delete: "i"

Insert: "and who are not contracting for agricultural services to be
performed on a farm or ranch."

~~XXXXXX~~

(Continued)

HC

March 8, 19 83

4. Page 2, line 23.

Following: "contractor"

Insert: "~~and who is not~~ contracting for agricultural services to be performed on a farm or ranch"

5. Page 3, line 8.

Following: line 8

Insert: "(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment regardless of whether the location is temporary or permanent and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

And, as so amended

BE CONCURRED IN

"STATEMENT OF INTENT ATTACHED"

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STANDING COMMITTEE REPORT

March 8

1983

MR. PRESIDENT

We, your committee on LABOR & EMPLOYMENT RELATIONS COMMITTEE

having had under consideration Statement of Intent, HOUSE Bill No. 277

Respectfully report as follows: That Statement of Intent, House Bill No. 277
be amended as follows:

1. Statement of Intent, line 23.

Following: line 23

Insert: "It is also the intent of the Legislature that the Division will provide employers with signs and determine an economical and convenient method of distribution and disposal of such signs through insurers when the employer is properly covered under one of the three compensation plans or when a policy is cancelled in accordance with 39-71-2205, MCA, or through the Division directly when a policy is cancelled in accordance with 39-71-2307, MCA, when self-insurance status is revoked in accordance with 39-71-2105, MCA, when an employer is exempt from coverage under this chapter, or when an employer lacks coverage and has been ordered to cease operations in accordance with 39-71-507, MCA, and that the Division will maintain procedures to control the distribution and disposal of such signs to prevent their improper use and to accommodate the changing coverage employers may have from time to time."

And, as so amended,

~~DOES~~

BE CONCURRED IN

41C.

SENATE COMMITTEE LABOR

Date 3/8/83 House Bill No. 277 Time 2:30

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN	✓	
JACK GALT	✓	
PAT GOODOVER	absent for vote	
DELWYN GAGE	✓	
CHET BLAYLOCK	✓	
JOHN LYNCH	✓	
DICK MANNING	✓	
GARY AKLESTAD, CHAIRMAN		✓

Margaret Nichols
Secretary

Gary C. Aklestad
Chairman

Motion: Senator Lynch moved that House Bill 277
Be Concurred In as amended.

Motion passed 6-1.

(include enough information on motion--put with yellow copy of committee report.)